

Contains Confidential Portions

Page 1

1 IN THE UNITED STATES BANKRUPTCY COURT  
2 FOR THE SOUTHERN DISTRICT OF NEW YORK  
3  
4

In re: )  
5 ) Chapter 11  
LEHMAN BROTHERS ) Case No. 08-13555 (JMP)  
6 HOLDINGS, INC., et al, ) (Jointly Administered)  
7 )  
Debtors. )  
-----)

8  
9  
10 CONTAINS HIGHLY CONFIDENTIAL PORTIONS  
11 [Pgs 63-64]  
12  
13

14 DEPOSITION OF ALAN M. JOHNSON  
15 New York, New York  
16 Friday, February 12, 2010  
17  
18  
19  
20  
21  
22

23 Reported by:  
24 MAYLEEN CINTRON, RMR, CRR  
25 JOB NO. 28245

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Page 2

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2

3

February 12, 2010

4

9:40 a.m.

5

6

7

DEPOSITION OF ALAN M. JOHNSON, an

8

expert witness, held at the offices of Jones

9

Day LLP, 222 East 41st Street, New York, New

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York, pursuant to Notice, before MayLeen

11

Cintron, a Registered Merit Reporter,

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Certified Realtime Reporter, and Notary

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Public of the State of New York.

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1 -A. Johnson -

2 A. There are separate paragraphs  
3 discussing severance. There is a "bonus"  
4 definition. It would be my opinion that the  
5 definition of "bonus" would have included the  
6 amounts for severance. The paragraph before  
7 talked about -- if I recall correctly, the --  
8 the amounts of severance that people would  
9 receive. I think they get at least as much as  
10 they had under Lehman Brothers.

11 Q. And you're not offering a legal  
12 opinion as to the meaning or relative meaning  
13 of those two provisions of the Asset Purchase  
14 Agreement, right?

15 A. I'm not offering a legal opinion.

16 Q. Do you take into account one way or  
17 the other that that schedule, Tab 30 in your  
18 reliance materials, is referred to in only one  
19 of those two sections of the Asset Purchase  
20 Agreement?

21 MS. NEUHARDT: Objection.

22 Foundation.

23 A. I'm sorry. Can you repeat the  
24 question?

25 Q. Do you recall that that schedule,

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1 -A. Johnson -

2 Tab 30 of your reliance materials, is referred  
3 to in only one of the two provisions that we  
4 are talking about in the Asset Purchase  
5 Agreement?

6 MS. NEUHARDT: Same objection.

7 Q. It is only in 9.1(c). Do you  
8 recall that?

9 MS. NEUHARDT: Same objection.

10 A. I'm missing --

11 Q. Let's just get the Asset Purchase  
12 Agreement now. It is Tab 29. Within Tab 29,  
13 sir, I ask you to turn to page 34. Take the  
14 time you need, sir, to scan through subsection  
15 (b) and subsection (c) of Article 9.

16 The question I have for you, sir,  
17 is: Do you agree with me that the  
18 September 16, 2008 schedule is referred to in  
19 only one of those sections?

20 MS. NEUHARDT: Again, I object to  
21 the characterization that it is  
22 necessarily referred to in any section.

23 Q. Take a look at Paragraph 9.1(c).

24 Do you see a reference in there to  
25 "Financial schedule delivered to Purchaser on

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1 -A. Johnson -

2 September 16, 2008 and initialled by an  
3 officer of each of Holdings and Purchaser"?

4 A. Yes.

5 Q. Do you understand that to be a  
6 reference to the schedule that's behind Tab 30  
7 of your reliance materials?

8 A. I think almost assuredly those are  
9 different. At least as you read exactly what  
10 (c) purports to be, that that -- it is almost  
11 inconceivable that that's 30, in terms of the  
12 2.0 billion.

13 Because it says here specifically,  
14 "The accrued '08 liability on the books." And  
15 I think there has been -- at least as I read  
16 the depositions, there was no testimony that  
17 the fiscal year '08 financial liability was  
18 \$2.0 billion.

19 There is testimony that a billion  
20 had been accrued. There is some -- I think  
21 you had an expert put an affidavit that put a  
22 number that was like 700 million and so forth.  
23 So there was -- but I don't recall anyone  
24 saying that the accrued '08 financial year  
25 liability was \$2 billion.

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1                   -A. Johnson -

2                   Q.    You've seen materials that indicate  
3                   that the accrued bonus liability was different  
4                   from \$2 billion?

5                   A.    The testimony I recall, I recall a  
6                   number of a billion, I recall a figure of  
7                   700 million. I think there is an affidavit  
8                   somewhere here that had that. But I don't --  
9                   I've seen no testimony that anything  
10                  approaching that magnitude was \$2 billion.

11                  Q.    So if it was \$2 billion just for  
12                  bonus, that number is too high, is that your  
13                  view?

14                  A.    Well, bonus, in this term, and  
15                  there is some language here, such proportions,  
16                  you consider it -- the liability would not  
17                  have included the equity that would have been  
18                  granted as part of the bonus.

19                  So if -- if the number -- if the  
20                  cash bonus number was \$2 billion, then the  
21                  number would have needed to have been 3- or \$4  
22                  billion in total.

23                  Q.    Take a look -- this is one of those  
24                  keep-your-thumb-on-this-document-and-  
25                  go-to-the-other-ones. But go to Tab 30 again.

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1                   -A. Johnson -

2       This is the one just after this. Take a look  
3       at the financial schedule.

4       My question to you, sir, is: Do you think the  
5       financial schedule behind Tab 30 is the  
6       schedule referred to in Paragraph 9.1(c) of  
7       the Asset Purchase Agreement?

8               A. Well, it -- it almost -- it can't  
9       be the financial year liability. So literally  
10      it can't be.

11             Q. I want to be clear about this  
12      because I think I'm understanding you to say  
13      one of two things, and I want to figure out  
14      which one it is. Either the 2.0 billion is  
15      not the right number on the schedule or -- and  
16      this is my question.

17             Is the schedule you're looking at,  
18      which is marked as Deposition Exhibit 19, in  
19      your view, the schedule that's referenced in  
20      Paragraph 9.1(c)?

21             MS. NEUHARDT: Objection to the  
22      extent you're asking for a legal  
23      conclusion.

24             A. Well, I don't literally, taken  
25      literally as I read the common English

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1                   -A. Johnson -

2           Q.     So when the Court reads your report  
3 with regard to Section 4, "Aggregate  
4 Compensation Spend," it should take no account  
5 one way or the other of the contents of the  
6 Berkenfeld schedule that is Tab 30 in your  
7 reliance materials?

8           MS. NEUHARDT: Objection. That  
9 mischaracterizes the testimony --

10          MR. GAFFEY: I am asking the  
11 question. I am not characterizing any  
12 earlier testimony.

13          Q.     I am asking how the Court should  
14 use your report.

15          A.     I think the Court should look at --  
16 I say it in several ways. The Court should  
17 look at the aggregate spend of Barclays, the  
18 amount that they spend was -- we have a table  
19 later where we break that out, was the spend  
20 consistent with market practice, was it  
21 consistent with what other firms would have  
22 done. I think they should look at the  
23 Berkenfeld, is it consistent with that figure.  
24 I think they can come to their own  
25 conclusions, the Court, I'm sure will, of what



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1                   -A. Johnson -

2       the legal interpretation of what (c) is.

3           Q.     When Judge Peck reads your report  
4       and reads Section 4 of your report, should he  
5       or should he not refer to the Berkenfeld  
6       schedule?

7           A.     I think Judge Peck -- I don't want  
8       to say what Judge Peck should or should not  
9       do. But I think Judge Peck should certainly  
10      be aware of the Berkenfeld schedule. I think  
11      that's a relevant document, at least I think  
12      that's a relevant document in this case.

13          Q.     But you don't think it is the  
14      document that's referred to in 9.1(c)?

15          A.     Well, I've said that several times  
16      now. That the word "comp" is different than  
17      "bonus." The word "bonus", you know, is a  
18      different word. Mr. Berkenfeld chose the word  
19      "comp." Those are different. It is a broader  
20      term.

21          Q.     You are giving me, sir, the  
22      reasoning for your answer, what I want is your  
23      answer. It's the yes or no question.

24          A.     I said they're different. I said  
25      that, I think, several times now.

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1 -A. Johnson -

2 Q. You referred to Mr. Berkenfeld.  
3 You didn't mean to suggest Mr. Berkenfeld is  
4 the author of Exhibit 19. I just don't want  
5 any unclear testimony.

6 A. No. No.

7 Q. Because you don't know --

8 A. I think he initialled it, that's  
9 all.

10 Q. Because you don't know who the  
11 author of Exhibit 19, Tab 30 in your reliance  
12 materials is, correct?

13 A. Yes, that's right.

14 Q. And you don't know the calculation  
15 that went into the \$2.0 billion "comp" item  
16 listed on that schedule, correct?

17 A. No.

18 Q. And you don't know the reasoning  
19 behind the calculation that went behind that  
20 2.0 billion item on the schedule, correct?

21 A. In the depositions that I have  
22 read, there is different testimonies reached  
23 in different ways.

24 Q. Is that a yes, you don't know?

25 A. I reviewed what people said, and to

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1 -A. Johnson -

2 me it is unclear what went into the 2.0.

3 Q. At the beginning of your report  
4 where you say -- I'm back on page 4 of your  
5 report, first full paragraph -- "there is  
6 nothing about the oral or written offers that  
7 suggest bad faith." That sentence.

8 A. Yes.

9 Q. What is your definition of the term  
10 "bad faith" as used in your report?

11 A. Not fulfilling their either legal  
12 or moral obligations to Lehman Brothers.

13 Q. And you're not an expert in how  
14 people fulfill either their legal or their  
15 moral obligations, are you, sir?

16 A. An expert? No.

17 MR. GAFFEY: I have nothing  
18 further. Thanks.

19 MR. DAKIS: Can we just take five  
20 minutes?

21 (Whereupon, a recess was taken  
22 from 12:26 p.m. to 12:30 p.m.)

23  
24 (Continued on next page to include jurat.)  
25

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1 -A. Johnson -

2 MR. DAKIS: The Committee has no  
3 questions. I think we are finished  
4 today.

5 MS. NEUHARDT: As I mentioned, we  
6 will be designating specific portions  
7 as highly confidential that address  
8 individual compensation figures.

9 MR. GAFFEY: We agree to that.

10 MR. DAKIS: We agree to that as  
11 well.

12 (Time noted: 12:30 p.m.)  
13  
14  
15  
16  
17

18 \_\_\_\_\_  
ALAN M. JOHNSON  
19  
20

21 Subscribed and sworn to before me,  
22 this \_\_\_\_ day \_\_\_\_\_ of 2010.  
23  
24

25 \_\_\_\_\_  
Notary Public

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1 -----I N D E X-----

2 WITNESS EXAMINATION BY PAGE

3 A. JOHNSON MR. GAFFEY 5

4

5 -----EXHIBITS-----

6 EXHIBIT FOR I.D.

7 Exhibit 617B 5

8 Alan M. Johnson Expert Report on

9 Compensation Issues

10

11 Exhibit 618B 5

12 Materials Relied Upon by Alan M.

13 Johnson

14

15

16 -----EXHIBITS-----

17 [previously marked]

18 EXHIBIT FOR I.D.

19 Exhibit 25 73

20 Exhibit 117 74

21 Exhibit 489 74

22 Exhibit 19 112

23

24

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